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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 TIFFANIE PADAN individually,  
and on behalf of others similarly situated,

11 Plaintiffs,

12 vs.

13 WEST BUSINESS SOLUTIONS, LLC, a  
Delaware limited liability company,

14 Defendant.

CASE NO.:

**COLLECTIVE ACTION / CLASS  
ACTION COMPLAINT**

15  
16 Plaintiff, TIFFANIE PADAN, individually and on behalf of all others similarly situated, by and  
17 through their attorneys, hereby bring this Collective/Class Action Complaint against Defendant, WEST  
18 BUSINESS SOLUTIONS, LLC, and state as follows:

19 **INTRODUCTION**

20 1. This is a collective and class action brought pursuant to 29 U.S.C. § 216(b) and Fed. R.  
21 Civ. P. 23 by Plaintiff, TIFFANIE PADAN (hereinafter referred to as “Plaintiff”), individually and on  
22 behalf of all similarly situated persons employed by Defendant, WEST BUSINESS SOLUTIONS,  
23 LLC (hereinafter referred to as “West Business Solutions” or “Defendant”), arising from Defendant’s  
24 willful violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, Nev. Rev. Stat.  
25 (hereinafter “N.R.S.”) §§ 608.016 and 608.018, and common law.

26 2. West Corporation is a Delaware corporation that is headquartered in Omaha, Nebraska.  
27 See <http://www.west.com/about> (last visited February 13, 2015). Through its subsidiaries, including  
28 West Business Solutions, West Corporation provides communications services (i.e. customer care,

1 sales, technical support) for its customers including “Agent-based Customer Contacts” comprised of  
2 “contact center and home-based agents to help our clients provide high-quality agent support.” *Id.*; see  
3 also <http://www.west.com/communication/what/>; <http://www.west.com/communication/how/> (last visited  
4 February 13, 2015).

5 3. West Corporation, and its subsidiaries including West Business Solutions, employee  
6 thousands of brick-and-mortar and home based customer service representatives. See  
7 [http://www.west.com/communication/how/contact\\_centers.asp](http://www.west.com/communication/how/contact_centers.asp) (last visited February 13, 2015).

8 4. West Business Solutions maintains brick-and-mortar contact centers in multiple states  
9 across the United States including, but not limited to: Alabama, Florida, Georgia, Illinois, Iowa,  
10 Minnesota, Nebraska, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Texas,  
11 Virginia, Washington and Wisconsin. See <http://www.west.com/about/locations.asp> (last visited  
12 February 13, 2015).

13 5. The majority of Defendant’s employees receive and respond to customer calls on behalf  
14 of West Corporation’s clients. These customer service employees are hourly, non-exempt employees  
15 who work in “brick-and-mortar” call center environments or as home-based customer service  
16 representatives.

17 6. Defendant requires its customer service representatives to work a set schedule.  
18 Defendant does not compensate the “brick-and-mortar” customer service representatives (hereinafter  
19 “customer service representatives”) for all work performed; instead, Defendant only pays those  
20 customer service representatives for the time they are on the telephone and available to accept calls.  
21 This policy results in customer service representatives not being paid for all time worked and for all of  
22 their overtime in violation of the FLSA, N.R.S. §§ 608.016 and 608.018, and common law.

23 7. Defendant’s customer service representatives use multiple computer programs, software  
24 programs, servers and applications, in the course of performing their responsibilities. These programs,  
25 servers and applications, are an integral and important part of their work as they cannot perform their  
26 job without them.

27 8. Regardless of which brick-and-mortar location they are located at, Defendant’s  
28 customer service representatives perform the same basic job duties and are required to use the same

1 computer programs, software programs, servers and applications.

2 9. Defendant's customer service representative jobs are non-exempt positions that typically  
3 pay a few dollars more than the federally mandated minimum wage.

4 10. The U.S. Department of Labor recognizes that call center jobs, like those held by  
5 Defendant's customer service representatives, are homogenous and it issued Fact Sheet #64 in July  
6 2008 to alert call center employees to some of the abuses which are prevalent in the industry. One of  
7 those abuses, which is occurring in this case, is an employer's refusal to pay for work "from the  
8 beginning of the first principal activity of the workday to the end of the last principal activity of the  
9 workday." Fact Sheet #64 at p. 2 (a copy of which is attached as **Exhibit A**).

10 11. Plaintiff was employed by Defendant as a customer service representative. In order to  
11 perform her job, Plaintiff was required to start-up and log-in to various, computer programs, software  
12 programs, servers and applications in order to access information and software. The start-up/log-in  
13 process took substantial time on a daily basis with said time ranging from 5 to 15 minutes per day.

14 12. Plaintiff was not actually "clocked in" for her shifts until *after* the computer start-  
15 up/log-in process was complete and she logged into the applicable programs, software, servers and  
16 applications, meaning that Plaintiff and all other Class members worked at least 5 to 15 minutes each  
17 per shift that they were never compensated for. This off-the-clock time Plaintiff spent starting up and  
18 logging into each session directly benefitted Defendant and this process was an essential part of  
19 Plaintiff's job responsibilities as a customer service representatives.

20 13. At the end of each shift, Plaintiff was required to log-out of Defendant's computer  
21 programs, software programs, servers and applications. The log-out process took substantial time on a  
22 daily basis with said time ranging from 3 to 10 minutes per day.

23 14. Defendant required Plaintiff to "clock out" *prior* to logging out of the computer  
24 programs, software programs, servers and applications, meaning that Plaintiff and all other Class  
25 members worked at least 3 to 10 minutes each per shift that they were never compensated for. This  
26 off-the-clock time Plaintiff spent logging out of each session directly benefitted Defendant and this  
27 process was an essential part of Plaintiffs' job responsibilities as home-based customer service  
28 representatives.

1           15.     Between the start-up/log-in process and the log-out process, Defendant failed to pay  
2 Plaintiff an amount equal to 8 to 25 minutes of compensable time per shift.

3           16.     The Department of Labor's Fact Sheet #64 specifically condemns an employer's non-  
4 payment of an employee's necessary pre-shift and post-shift activities: "An example of the first  
5 principal activity of the day for agents/specialists/representatives working in call centers includes  
6 starting the computer to download work instructions, computer applications and work-related emails."  
7 See Exhibit A, at p. 2. Additionally, the FLSA requires that "[a] daily or weekly record of all hours  
8 worked, including time spent in pre-shift and post-shift job-related activities must be kept." *Id.*

9           17.     Defendant knew or could have easily determined how long it took for its customer  
10 service representatives to complete the preliminary start-up/log-in process and Defendant could have  
11 properly compensated Plaintiff and the Class for the preliminary start-up/log-in work they performed,  
12 but did not. Likewise, Defendant also knew or could have easily determined or tracked how long it  
13 took for each customer service representatives to complete the postliminary computer log-out process,  
14 and Defendant could have paid Plaintiff and the Class for the postliminary work they performed, but  
15 did not.

16           18.     The named Plaintiff is a former customer service representative who worked for  
17 Defendant on an hourly basis in Defendant's Nevada brick-and-mortar contact center.

18           19.     Plaintiff brings this action on behalf of herself and all other similarly situated hourly  
19 customer service representative employees of Defendant to obtain declaratory relief and recover unpaid  
20 wages and overtime, liquidated damages, penalties, fees and costs, pre- and post-judgment interest, and  
21 any other remedies to which they may be entitled.

## 22                                   **JURISDICTION AND VENUE**

23           20.     This Court has subject-matter jurisdiction over Plaintiff's FLSA claim pursuant to 28  
24 U.S.C. § 1331 because Plaintiff's claim raises a federal question under 29 U.S.C. § 201, *et seq.*

25           21.     Additionally, this Court has jurisdiction over Plaintiff's collective action FLSA claim  
26 pursuant to 29 U.S.C. § 216(b), which provides that suit under the FLSA "may be maintained against  
27 any employer . . . in any Federal or State court of competent jurisdiction."

28           22.     Defendant's annual sales exceed \$500,000 and it has more than two employees, so the

1 FLSA applies in this case on an enterprise basis. Defendant's customer service representatives engage  
2 in interstate commerce and therefore they are also covered by the FLSA on an individual basis.

3 23. This Court has jurisdiction over Plaintiff's state law class claims pursuant to the Class  
4 Action Fairness Act of 2005, 28 U.S.C. § 1332(d). The aggregate claims of the individual Class  
5 members exceed the sum value of \$5,000,000 exclusive of interest and costs, there are believed to be in  
6 excess of 100 Class members, and this is a case in which more than two-thirds of the proposed Class  
7 members and Defendant are citizens of different states.

8 24. A private party may also bring an action for damages for violations of t N.R.S. §§  
9 608.016, 608.018. Plaintiff's state claims originate from the same facts that form the basis of her  
10 federal claims. The court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28  
11 U.S.C. §1367.

12 25. This court has personal jurisdiction over Defendant because it does business within the  
13 state of Nevada and is registered with the Nevada Department of the Secretary of State.

14 26. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) because  
15 Defendant employs service representatives in this district, and a substantial portion of the events that  
16 give rise to the Plaintiff's claims occurred in this district.

### 17 PARTIES

18 27. Plaintiff is a resident of Reno, Nevada, and was employed by Defendant as an hourly  
19 customer service representative from November 2013 to August 2014. Plaintiff signed a consent form  
20 to join this lawsuit, which is attached hereto as **Exhibit B**.

21 28. Defendant is a Delaware limited liability company that is licensed to do business in  
22 Nevada. Defendant employs customer service representatives in Nevada. Defendant's registered agent  
23 for service of process in Nevada is CSC Services of Nevada, Inc., 2215-B Renaissance Dr., Las Vegas,  
24 Nevada 89119.

### 25 GENERAL ALLEGATIONS

26 29. Plaintiff served as a customer service representative for Defendant at its brick-and-  
27 mortar call center location in Nevada from November 2013 to August 2014. Plaintiff typically worked  
28

1 an eight hour shift (with a 30 minute lunch period) that began at 4:00 p.m. and concluded at 12:30 a.m.

2 During her employment, Plaintiff earned \$11.00 per hour.

3 30. Throughout her employment with Defendant, Plaintiff regularly worked off-the-clock as  
4 part of her job as a customer service representative.

5 31. In order to perform her job, Plaintiff was required to start-up and log-in to various,  
6 computer programs, software programs, servers and applications, in order to access information and  
7 software. The start-up/log-in process took substantial time on a daily basis with said time ranging from  
8 5 to 15 minutes per day.

9 32. Plaintiff was not actually “clocked in” for her shifts until *after* the computer start-  
10 up/log-in process was complete and she logged into the applicable programs, software, servers and  
11 applications, meaning that Plaintiff and all other Class members worked at least 5 to 15 minutes each  
12 per shift that they were never compensated for. This off-the-clock time Plaintiff spent starting up and  
13 logging into each session directly benefitted Defendant and this process was an essential part of  
14 Plaintiff’s job responsibilities as a customer service representatives.

15 33. At the end of each shift, Plaintiff was required to log-out of Defendant’s computer  
16 programs, software programs, servers and applications. The log-out process took substantial time on a  
17 daily basis with said time ranging from 3 to 10 minutes per day.

18 34. Defendant required Plaintiff to “clock out” *prior* to logging out of the computer  
19 programs, software programs, servers and applications, meaning that Plaintiff and all other Class  
20 members worked at least 3 to 10 minutes each per shift that they were never compensated for. This  
21 off-the-clock time Plaintiff spent logging out of each session directly benefitted Defendant and this  
22 process was an essential part of Plaintiffs’ job responsibilities as home-based customer service  
23 representatives.

24 35. Between the start-up/log-in process and the log-out process, Defendant failed to pay  
25 Plaintiff an amount equal to 8 to 25 minutes of compensable time per shift. Thus, Plaintiffs and the  
26 putative Class are owed substantial back pay prior to liquidation and interest.

27 36. Some examples of specific workweeks where Defendant failed to pay Plaintiff overtime  
28 for hours worked in excess of 40 hours (as mandated by the FLSA and Nevada law) include the

1 following:

2 a. Week of December 16, 2013:

- 3 ➤ Plaintiff was paid for 40.0 hours over five (5) shifts (**Exhibit C**)
- 4 ➤ With preliminary and postliminary time of 8-25 minutes per shift,
- 5 Plaintiff should have been paid an additional 40 to 125 minutes for
- 6 the week. Thus, Plaintiff is entitled to overtime wages within a
- 7 range of 40 to 125 minutes.

8 b. Week of February 10, 2014:

- 9 ➤ Plaintiff was paid for 39.88 hours over five (5) shifts (**Exhibit D**)
- 10 ➤ With preliminary and postliminary time of 8-25 minutes per shift,
- 11 Plaintiff should have been paid an additional 40 to 125 for the week.
- 12 Thus, Plaintiff is entitled to overtime wages within a range of 34 to
- 13 119 minutes.

14 c. Week of March 3, 2014:

- 15 ➤ Plaintiff was paid for 40.08 hours over five (5) shifts (**Exhibit E**)
- 16 ➤ With preliminary and postliminary time of 8-25 minutes per shift,
- 17 Plaintiff should have been paid an additional 40 to 125 minutes for
- 18 the week. Thus, Plaintiff is entitled to overtime wages within a
- 19 range of 40 to 125 minutes.

20 37. Some examples of specific workweeks where Defendant failed to pay Plaintiff overtime

21 for hours worked on a daily basis in excess of an 8 hour workday (as mandated by Nevada law) include

22 the following:

23 a. Week of June 23, 2014:

- 24 ➤ Plaintiff was paid straight-time (no overtime) for 8.52 hours (one
- 25 shift) (**Exhibit F**)
- 26 ➤ With preliminary and postliminary time of 8-25 minutes per shift,
- 27 Plaintiff should have been paid an additional 8 to 25 minutes for the
- 28 week. Thus, Plaintiff is entitled to overtime wages within a range of
- 8 to 25 minutes (plus .52 hours of daily overtime hours that
- Defendant also failed to pay her for).

b. Week of June 30, 2014:

- Plaintiff was paid straight-time (no overtime) for 7.98 hours (one



shift) (*Exhibit F*)

➤ With preliminary and postliminary time of 8-25 minutes per shift, Plaintiff should have been paid an additional 8 to 25 minutes for the week. Thus, Plaintiff is entitled to overtime wages within a range of 8 to 25 minutes.

38. At all relevant times, Defendant was Plaintiff's "employer" and Defendant directed and directly benefited from the work performed by Plaintiff and the putative Class during the preliminary start-up/log-in process and during the postliminary log-out process.

39. At all relevant times, Defendant controlled Plaintiff's and the putative Class's work schedule, duties, protocols, applications, assignments and employment conditions.

40. At all relevant times, Defendant was able to track the amount of time that Plaintiff and the putative Class spent in connection with the preliminary start-up/log-in process and during the postliminary log-out process; however, Defendant failed to document, track or pay Plaintiff and the putative Class for the preliminary and postliminary work that they performed in connection with each shift.

41. At all relevant times, Defendant used its attendance policies against Plaintiff and the putative Class for their preliminary and postliminary time worked and failed to pay for that time.

42. At all relevant times, Defendant's policies and practices deprived Plaintiff and the putative Class of wages owed for the preliminary and postliminary activities Plaintiff and the putative Class performed. Because Plaintiff and the putative Class typically worked 40 hours or more in a workweek, Defendant's policies and practices also deprived Plaintiff and the putative Class of overtime pay at a rate of 1.5 times their regular rate of pay. Additionally, Defendant's policies and practices deprived Plaintiff and members of the putative Class that worked in Nevada of overtime pay at a rate of 1.5 times their regular rate of pay for all hours worked in excess of 8 hours per day, as required under Nevada law.

43. Defendant is a leader in the field of call center services and knew or should have known that Plaintiff and other customer service representatives' time spent in connection with the preliminary start-up/log-in process and during the postliminary log-out process is compensable under the FLSA and Nevada law.



**COLLECTIVE ACTION ALLEGATIONS**

44. Plaintiff brings this action pursuant to 29 U.S.C. § 216(b) of the FLSA on her own behalf and on behalf of:

**All similarly situated current and former hourly customer service representatives who worked for Defendant at any time during the last three years.**

(hereinafter referred to as the “Class”). Plaintiff reserves the right to amend this definition as necessary.

45. Excluded from the Class are Defendant’s executives, administrative and professional employees, including computer professionals and outside sales persons.

46. With respect to the claims set forth in this action, a collective action under the FLSA is appropriate because the employees described above are “similarly situated” to Plaintiff under 29 U.S.C. § 216(b). The class of employees on behalf of whom Plaintiff bring this collective action are similarly situated because (a) they have been or are employed in the same or similar positions; (b) they were or are subject to the same or similar unlawful practices, policy, or plan; and (c) their claims are based upon the same factual and legal theories.

47. The employment relationships between Defendant and every Class member are the same and differs only name, location, and rate of pay. The key issues – the amount of uncompensated preliminary start-up/log-in time and postliminary log-out time owed to each employee – does not vary substantially from Class member to Class member.

48. The key legal issues are also the same for every Class member, to wit: whether the 5 to 15 minutes of preliminary start-up/log-in time and the 3 to 10 minutes of postliminary log-out time are compensable under the FLSA.

49. Plaintiff estimates that the Class, including both current and former employees over the relevant period, will include several thousand members. The precise number of Class members should be readily available from a review of Defendant’s personnel and payroll records.

**RULE 23 NEVADA CLASS ACTION ALLEGATIONS**

50. Plaintiff brings this action pursuant to Fed R. Civ. P. 23(b)(2) and (b)(3) on her own

1 behalf and on behalf of:

2 **All similarly situated current and former hourly customer service**  
3 **representatives who worked in Nevada for Defendant at any time during**  
4 **the last three years.**

5 (hereinafter referred to as the “Rule 23 Nevada Class”). Plaintiff reserves the right to amend this  
6 definition as necessary.

7 51. The members of the Rule 23 Nevada Class are so numerous that joinder of all Rule 23  
8 Nevada Class members in this case would be impractical. Plaintiff reasonably estimates that there are  
9 hundreds of Rule 23 Nevada Class members. Rule 23 Nevada Class members should be easy to  
10 identify from Defendant’s computer systems and electronic payroll and personnel records.

11 52. There is a well-defined community of interest among Rule 23 Nevada Class members  
12 and common questions of law and fact predominate in this action over any questions affecting  
13 individual members of the Rule 23 Nevada Class. These common legal and factual questions, include,  
14 but are not limited to, the following:

- 15 a. Whether the preliminary time Rule 23 Nevada Class members spend on start-  
16 up/log-in activities prior to “clocking in” for each shift is compensable time;
- 17 b. Whether the postliminary time Rule 23 Nevada Class members spend on log-out  
18 activities subsequent to “clocking out” for each shift is compensable time;
- 19 c. Whether Rule 23 Nevada Class members are owed wages (above the federally  
20 mandated minimum wage and overtime due under the FLSA) for time spent  
21 performing preliminary and postliminary activities, and if so, the appropriate  
22 amount thereof; and
- 23 d. Whether Defendant’s non-payment of wages for all compensable time amounts to a  
24 breach of contract.

25 53. Plaintiff’s claims are typical of those of the Rule 23 Nevada Class in that she and all  
26 other Rule 23 Nevada Class members suffered damages as a direct and proximate result of the  
27 Defendant’s common and systemic payroll policies and practices. Plaintiff’s claims arise from the  
28 same policies, practices, promises and course of conduct as all other Rule 23 Nevada Class members’  
claims and her legal theories are based on the same legal theories as all other Rule 23 Nevada Class  
members.

1           54. Plaintiff will fully and adequately protect the interests of the Rule 23 Nevada Class and  
2 she has retained counsel who are qualified and experienced in the prosecution of nationwide wage and  
3 hour class actions. Neither Plaintiff nor her counsel have interests that are contrary to, or conflicting  
4 with, the interests of the Rule 23 Nevada Class.

5           55. A class action is superior to other available methods for the fair and efficient  
6 adjudication of this controversy, because, *inter alia*, it is economically infeasible for Rule 23 Nevada  
7 Class members to prosecute individual actions of their own given the relatively small amount of  
8 damages at stake for each individual along with the fear of reprisal by their employer. Prosecution of  
9 this case as a Rule 23 Class action will also eliminate the possibility of duplicative lawsuits being filed  
10 in state and federal courts throughout the nation.

11           56. This case will be manageable as a Rule 23 Class action. Plaintiff and her counsel know  
12 of no unusual difficulties in this case and Defendant and its corporate clients all have advanced,  
13 networked computer and payroll systems that will allow the class, wage, and damages issues in this  
14 case to be resolved with relative ease.

15           57. Because the elements of Rule 23(b)(3) are satisfied in this case, class certification is  
16 appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393; 130 S. Ct. 1431,  
17 1437 (2010) (“[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets  
18 the specified criteria to pursue his claim as a class action”).

19           58. Because Defendant acted and refused to act on grounds that apply generally to the Rule  
20 23 Nevada Class and declaratory relief is appropriate in this case with respect to the Rule 23 Nevada  
21 Class as a whole, class certification pursuant to Rule 23(b)(2) is also appropriate.

22                   **RULE 23 NATIONWIDE CLASS ACTION ALLEGATIONS**

23           59. Plaintiff brings this action pursuant to Fed R. Civ. P. 23(b)(2) and (b)(3) on her own  
24 behalf and on behalf of:

25                   **All similarly situated current and former hourly customer service**  
26                   **representatives who worked for Defendant at any time during the last**  
27                   **three years.**

28 (hereinafter referred to as the “Rule 23 Nationwide Class”). Plaintiffs reserve the right to amend this

1 definition as necessary.

2         60.     The members of the Rule 23 Nationwide Class are so numerous that joinder of all Rule  
3 Rule 23 Nationwide Class members in this case would be impractical. Plaintiff reasonably estimates there  
4 are thousands of Rule 23 Nationwide Class members. Rule 23 Nationwide Class members should be  
5 easy to identify from Defendant's computer systems and electronic payroll and personnel records.

6         61.     There is a well-defined community of interest among Rule 23 Nationwide members and  
7 common questions of law and fact predominate in this action over any questions affecting individual  
8 members of the Rule 23 Nationwide Class. These common legal and factual questions, include, but are  
9 not limited to, the following:

- 10                 a.   Whether the preliminary time Rule 23 Nationwide Class members spend on  
11                     start-up/log-in activities prior to "clocking in" for each shift is compensable  
12                     time;  
13                 b.   Whether the postliminary time Rule 23 Nationwide Class members spend  
14                     on log-out activities subsequent to "clocking out" for each shift is  
15                     compensable time; and  
16                 c.   Whether Defendant's non-payment of wages for all compensable time  
17                     amounts to a breach of contract.

18         62.     Plaintiff's claims are typical of those of the Rule 23 Nationwide Class in that she and all  
19 other Rule 23 Nationwide Class members suffered damages as a direct and proximate result of the  
20 Defendant's common and systemic payroll policies and practices. Plaintiff's claims arise from the  
21 same pay policies, practices, promises and course of conduct as all other Rule 23 Nationwide Class  
22 members' claims and her legal theories are based on the same legal theories as all other Rule 23  
23 Nationwide Class members.

24         63.     Plaintiff will fully and adequately protect the interests of the Rule 23 Nationwide Class  
25 and has retained counsel who are qualified and experienced in the prosecution of nationwide wage and  
26 hour class actions. Neither Plaintiff nor her counsel have interests that are contrary to, or conflicting  
27 with, the interests of the Rule 23 Nationwide Class.

28         64.     A class action is superior to other available methods for the fair and efficient  
adjudication of this controversy, because, *inter alia*, it is economically infeasible for Rule 23

1 Nationwide Class members to prosecute individual actions of their own given the relatively small  
2 amount of damages at stake for each individual along with the fear of reprisal by their employer.  
3 Prosecution of this case as a Rule 23 Class action will also eliminate the possibility of duplicative  
4 lawsuits being filed in state and federal courts throughout the nation.

5 65. This case will be manageable as a Rule 23 Class action. Plaintiff and her counsel know  
6 of no unusual difficulties in this case and Defendant and its corporate clients all have advanced,  
7 networked computer and payroll systems that will allow the class, wage, and damages issues in this  
8 case to be resolved with relative ease.

9 66. Because the elements of Rule 23(b)(3) are satisfied in this case, class certification is  
10 appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393; 130 S. Ct. 1431,  
11 1437 (2010) (“[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets  
12 the specified criteria to pursue his claim as a class action”).

13 67. Because Defendant acted and refused to act on grounds that apply generally to the Rule  
14 23 Nationwide Class and declaratory relief is appropriate in this case with respect to the Rule 23  
15 Nationwide Class as a whole, class certification pursuant to Rule 23(b)(2) is also appropriate.

16 **FIRST CLAIM FOR RELIEF**

17 **(29 U.S.C. § 216(b) Collective Action)**

18 Violation of the Fair Labor Standards Act,  
19 29 U.S.C. § 201, *Et Seq.* -- Failure to Pay Overtime

20 68. Plaintiff re-alleges and incorporates all previous paragraphs herein and further allege as  
21 follows.

22 69. At all times relevant to this action, Defendant was an employer under 29 U.S.C. § 203(d)  
23 of the FLSA, subject to the provisions of 29 U.S.C. § 201, *et seq.*

24 71. Defendant is engaged in interstate commerce, or in the production of goods for  
25 commerce, as defined by the FLSA.

26 72. At all times relevant to this action, Plaintiff was an “employee” of Defendant within the  
27 meaning of 29 U.S.C. § 203(e)(1) of the FLSA.

28 73. Plaintiff either (1) engaged in commerce; or (2) engaged in the production of goods for

1 commerce; or (3) was employed in an enterprise engaged in commerce or in the production of goods for  
2 commerce.

3 74. At all times relevant to this action, Defendant “suffered or permitted” Plaintiff and all  
4 similarly situated current and former employees to work and thus “employed” them within the meaning  
5 of 29 U.S.C. § 203(g) of the FLSA.

6 75. At all times relevant to this action, Defendant required Plaintiff and all similarly situated  
7 current and former Class members to perform 8 to 15 minutes of preliminary start-up/log-in activities  
8 per shift, but failed to pay these employees the federally mandated overtime compensation for all  
9 services performed.

10 76. At all times relevant to this action, Defendant required Plaintiff and all similarly situated  
11 current and former Class members to perform no less than 3 to 10 of postliminary logout activities per  
12 shift, but failed to pay these employees the federally mandated overtime compensation for all services  
13 performed.

14 77. The preliminary and postliminary off-the-clock work performed by Plaintiff and all  
15 similarly situated Class members every session is an essential part of their jobs and these activities and  
16 the time associated with these activities is not *de minimis*.

17 78. In workweeks where Plaintiff and other Class members worked 40 hours or more, the  
18 uncompensated preliminary start-up/log-in time and postliminary log-out time, should have been paid  
19 at the federally mandated rate of 150% of each employee’s regularly hourly wage. 29 U.S.C. § 207.

20 79. Defendant’s violations of the FLSA were knowing and willful. Defendant knew or could  
21 have easily determined how long it took for its customer service representatives to complete the  
22 preliminary start-up/log-in process and Defendant could have properly compensated Plaintiff and the  
23 Class for the preliminary start-up/log-in work they performed, but did not. Likewise, Defendant also  
24 knew or could have easily determined or tracked how long it took for each customer service  
25 representatives to complete the postliminary computer log-out process, and Defendant could have paid  
26 Plaintiff and the Class for the postliminary work they performed, but did not.

27 80. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of the Act, an  
28 employee is entitled to his or her unpaid wages (and unpaid overtime if applicable) plus an additional

1 equal amount in liquidated damages (double damages), plus costs and reasonable attorneys' fees.

2 **SECOND CLAIM FOR RELIEF**

3 **(Rule 23 Nevada Class Action)**

4 Violations Of N.R.S. §§ 608.016 and 608.018 – Failure to Pay Wages and  
5 Overtime under Nevada Law

6 81. Plaintiff re-alleges and incorporates all previous paragraphs herein and further alleges as  
7 follows.

8 82. All member of the Rule 23 Nevada Class are entitled to their regular wages and/or  
9 overtime pursuant to Nevada's wage and hour laws, N.R.S. §§ 608.016 and 608.018.

10 83. Defendant, Plaintiff and the Rule 23 Nevada Class members are "employers" and  
11 "employees" for the purposes of Nevada law.

12 84. N.R.S. § 608.016 states that an "employer shall pay to the employee wages for each  
13 hour the employee works."

14 85. N.R.S. § 608.018 states that an employee must be paid overtime, equal to 1.5 times the  
15 employee's regular rate of pay, for all hours worked in excess of forty (40) hours per week or eight (8)  
16 hours per day assuming the employee earns less than 1.5 times the Nevada minimum wages.

17 86. By failing to pay Plaintiff and members of the Rule 23 Nevada Class for all of the time  
18 they worked (including a payment equal to 1.5 times their ordinary wage on that time), including the  
19 time they worked in connection with the preliminary start-up/log-in process and in connection with the  
20 postliminary log-out process, Defendant violated N.R.S. §§ 608.016 and 608.018.

21 87. Defendant's violations of N.R.S. §§ 608.016 and 608.018 were intentional and, as such,  
22 the three-year statute of limitation found in N.R.S. § 11.190(3) applies to those claims.

23 88. Defendant's actions discussed above were willfully oppressive, fraudulent and malicious,  
24 entitling Plaintiff and the Rule 23 Nevada Class to punitive damages.

25 89. Defendant violated Nevada law, including N.R.S. §§ 608.016 and 608.018, by regularly  
26 and repeatedly failing to compensate Plaintiff and the Rule 23 Nevada Class for the time spent on the  
27 work activities described in this Complaint. As a result, Plaintiff and the Rule 23 Nevada Class have and  
28 will continue to suffer loss of income and other damages. Accordingly, Plaintiff and the Rule 23 Nevada



1 Class are entitled to recover unpaid wages owed, plus costs, interest, attorneys' fees, and other  
2 appropriate relief under Nevada law, including, but not limited to all damages, fees and costs, available  
3 under N.R.S. §§ 608.005 *et seq.*

4 **THIRD CLAIM FOR RELIEF**

5 **(Rule 23 Nationwide Class Action)**

6 **Breach of Contract**

7 90. Plaintiff re-alleges and incorporates all previous paragraphs herein and further alleges as  
8 follows.

9 91. At all times relevant to this action, Defendant had a contract with Plaintiff and every  
10 other Rule 23 Nationwide Class member to pay each employee for each hour they worked at a pre-  
11 established (contractual) regularly hourly rate.

12 92. Each Rule 23 Nationwide Class member's contractual hourly rate is identified in  
13 paystubs and other records that Defendant prepares as part of its regular business activities.

14 93. Plaintiff and every other Rule 23 Nationwide Class member performed under the contract  
15 by doing their jobs and carrying out the preliminary and postliminary activities that Defendant required  
16 or accepted.

17 94. By not paying Plaintiffs and every other Rule 23 Nationwide Class member the agreed  
18 upon hourly wage for the preliminary start-up/log-in activities performed prior to clocking in for each  
19 shift and the postliminary log-out activities performed subsequent to clocking out at the end of each  
20 shift, Defendant systematically breached its contracts with Plaintiff and each member of the Rule 23  
21 Nationwide Class.

22 95. Plaintiff's and the Rule 23 Nationwide Class members' remedies under the FLSA are  
23 inadequate in this case to the extent Defendant paid them more than the federally mandated minimum  
24 wage of \$7.25 per hour but less than 40 hours per week (i.e., pure "gap time" claims).

25 96. Defendant also breached its duty of good faith and fair dealing by failing to keep track of  
26 the time Plaintiff and other Rule 23 Nationwide Class members spent doing preliminary, and  
27 postliminary activities, which is a fundamental part of an "employer's job."

28 97. As a direct and proximate result of Defendant's breaches of the contracts alleged herein,

1 Plaintiff and every other member of the Rule 23 Nationwide Class have been damaged, in an amount to  
2 be determined at trial.

3 98. These claims are appropriate for nationwide class certification under Rules 23(b)(2) and  
4 (b)(3) because the law of contracts is substantially the same throughout the United States.

5 **RELIEF REQUESTED**

6 WHEREFORE, Plaintiff, Tiffanie Padan, requests the following relief:

- 7 a. Certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with  
8 respect to the FLSA claims set forth herein (Count I);
- 9 b. Certifying this action as a class action (for the Rule 23 Nevada Class) pursuant to Rule  
10 23(b)(2) and (b)(3) with respect to Plaintiff's state law claim (Count II);
- 11 c. Certifying this action as a class action (for the Rule 23 Nationwide Class) pursuant to  
12 Rule 23(b)(2) and (b)(3) with respect to Plaintiff's breach of contract claim (Count III);
- 13 d. Ordering Defendant to disclose in computer format, or in print if no computer readable  
14 format is available, the names and addresses of all collective action Class members and  
15 Rule 23 Class members, and permitting Plaintiff to send notice of this action to all those  
16 similarly situated individuals, including the publishing of notice in a manner that is  
17 reasonably calculated to apprise the class members of their rights by law to join and  
18 participate in this lawsuit;
- 19 e. Designating Plaintiff as the representative of the FLSA collective action Class, the Rule  
20 23 Nevada Class, and the Rule 23 Nationwide Class and undersigned counsel as Class  
21 counsel for the same;
- 22 f. Declaring Defendant violated the FLSA and the Department of Labor's attendant  
23 regulations as cited herein;
- 24 g. Declaring Defendant's violation of the FLSA was willful;
- 25 h. Declaring Defendant violated N.R.S. §§ 608.016 and 608.018 and that said violations  
26 were intentional, willfully oppressive, fraudulent and malicious;
- 27 i. Declaring Defendant breached its contracts with Plaintiff and the members of the Rule  
28 23 Nationwide Class by failing to pay them for each hour they worked at a pre-  
established (contractual) regularly hourly rate;
- j. Granting judgment in favor of Plaintiff and against Defendant and awarding Plaintiff and  
the collective action Class, the Rule 23 Nevada Class, and the Rule 23 Nationwide  
Class, the full amount of damages and liquidated damages available by law;
- k. Awarding reasonable attorneys' fees and costs incurred by Plaintiff in filing this action as

1 provided by statute;

2 l. Awarding pre- and post-judgment interest to Plaintiff on these damages; and

3 m. Awarding such other and further relief as this Court deems appropriate.

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**JURY DEMAND**

Plaintiff, TIFFANIE PADAN, individually and on behalf of all others similarly situated, by and through her attorneys, hereby demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the court rules and statutes made and provided with respect to the above entitled cause.

Dated: March 4, 2015

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